

REMARKS

Reconsideration of this application is respectfully requested.

Claims 1-4, 7-11, 15, 17, 18, 23 and 24 are pending in the application. Upon entry of this Amendment, claims 1, 23 and 24 will be amended, and new claim 25 will be added.

In the outstanding Office Action of May 29, 2007, the Examiner objected to claims 1 and 24 because the term “portion” was misspelled as “potion”.

In the outstanding Office Action, the Examiner also objected to claims 1, 23 and 24 as reciting a confusing limitation, to wit, “portions of the matter surface areas corresponding to the protrusions’ bases being un-apertured on another side of the matter surface areas opposite the protrusions”. It appears that the Examiner further rejected claims 1, 23 and 24 under 35 U.S.C. §112, second paragraph, as being indefinite for the same reason.

First, it is noted that independent claim 23 does not recite the limitation which the Examiner contends is confusing, and thus, it should not have been included in the Examiner’s objection and §112 rejection. With regard to independent claims 1 and 24, the limitation to which the Examiner objected has now been amended to read as follows:

a second side of the matter surface areas opposite the first
side of the matter surface areas having portions opposite the
protrusions’ bases that are un-apertured.

It is believed that the foregoing amendment to the objected-to limitation is not confusing, and thus, not objectionable. As such, the Examiner's objection and §112 rejection of claims 1, 23 and 24 should be withdrawn.

In the outstanding Office Action, the Examiner further rejected claims 1-4, 7-10, 15, 17, 23 and 24 under 35 U.S.C. §102(b) as being anticipated by <http://web.archive.org/web/2001020215800/http://durgrid.com/>, and claims 11 and 18 under 35 U.S.C. §103(a) as being unpatentable over <http://web.archive.org/web/2001020215800/http://durgrid.com/>. The Examiner's rejections are respectfully traversed.

First, it is noted that the DuraGrid website cited by the Examiner discloses a soft tile that is designed to be used over flat surface covered with water. There is no teaching in the DuraGrid website that such soft tiles can be used as an air gap spacer for providing spacing between an outer wall surface of a building under construction and an exterior cladding material, to facilitate air circulation in, and liquid drainage from, the spacing between the outer wall surface and the exterior cladding material, as recited in independent claims 1, 23 and 24. Thus, one of ordinary skill in the art would not look to the DuraGrid soft tiles to provide spacing between an outer wall surface of a building under construction and an exterior cladding material.

In any event, it is further noted that for a claimed invention to be anticipated by a prior art reference, every element of the claim must be disclosed in the reference.

Independent claim 24 recites “a plurality of mutually spaced protrusions . . . [that] have a shape selected from the group consisting of: pyramidal, flat topped pyramidal, conical, flat topped conical, rectangular based pyramid, cuboid and rectangular block.”

Dependent claim 10, which depends from claim 1, also recites that the protrusions have a shape selected from the group consisting of: pyramidal, flat topped pyramidal; conical, flat topped conical, rectangular based pyramid, cuboid and rectangular block.

Independent claims 1 and 23 have been amended to recite that the “plurality of mutually spaced protrusions” each have “a base of a first width and an apex of a second width that is less than the first width”. This allows a reduction in the amount of material needed to form the air gap spacer, and thereby, achieve adequate air and liquid flow. *See*

Application, p. 10, lns. 17-19. Independent claims 1, 23 and 24 have been further amended to recite that “the thickness of the planar surfaces and the ratio of the matter surface areas to the aperture areas are of sizes so as to prevent trapping water and moisture in horizontal spaces defined by the matter surface areas when the air gap spacer is mounted between the outer wall surface of the building and the exterior cladding material.” *Id.*

A review of the actual website cited by the Examiner reveals that each of the DuraGrid soft tiles includes a cylindrical protrusion (cited Figure 1) that holds the soft tile above water. These cylindrical protrusions do not have a shape that is pyramidal, flat topped pyramidal, conical, flat topped conical, rectangular based pyramid, cuboid or rectangular block, as recited in claims 10 and 24. These cylindrical protrusions also do

not have a shape with a base of a first width and an apex of a second width that is less than the first width, as recited in claims 1 and 23. Thus, for these reasons alone, the DuraGrid soft tiles do not anticipate claims 1, 10, 23 and 24.

Although the DuraGrid soft tiles include cylindrical protrusions from one of its surfaces, Applicant contends that such soft tiles cannot be used as an air gap spacer for dimensional reasons, and also because the building codes typically prohibit that more than 20% of a wall area be covered. Applicant asserts that the DuraGrid soft tiles far exceed this measure, and thus, define numerous spaces that can trap and accumulate water and moisture if the tile were to be used vertically between a wall and cladding over the wall. Applicant contends that this occurs because a greater amount of material is needed to manufacture the DuraGrid tiles to be rigid and at the same time comfortable for humans to step on, and thus, more than 20% of the overall surface needs to be covered to achieve this objective.

Applicant further asserts that the DuraGrid soft tiles can not be used as an air gap spacer between the outer wall of a building and exterior cladding material because such tiles can not meet or achieve typical building code requirements. Applicant identifies these requirements as follows:

- 1) the protrusions offer a minimum of 10mm or 3/8 inch air gap space;
- 2) the air gap spacer does not include protrusions or cavities that would trap water and allow it to soak into the wall cavity or back toward the siding material;

3) the spacer does not define or include any surfaces that would lead water toward the building paper; and

4) the water passing through the siding be lead freely to the bottom for drainage in the ground.

In contrast, independent claims 1, 23 and 24 of the present application have been amended to clarify that, in the air gap spacer of the present invention, “the thickness of the planar surfaces and the ratio of the matter surface areas to the aperture areas are of sizes so as to prevent trapping water and moisture in horizontal spaces defined by the matter surface areas when the air gap spacer is mounted between the outer wall surface of the building and the exterior cladding material.” Applicant contends that this feature is supported by the drawings of the present application, which show that the planar surface is relatively thinner than the protrusions, and that the areas between the matter surface areas do not trap water in horizontal spaces when the air gap spacer is in placed between the wall and the matter surface areas.

Regarding claim 15, the Examiner argues that the DuraGrid soft tiles are “adapted to be secured to the surface of the building being constructed by way of securing means selected from the group consisting of tacks, nails and screws,” as recited in claim 15, and points to a “Female Loop” on a first soft tile that is designed to link to a “Male Peg” on a second soft tile to lock the two tiles together. Clearly this is not a device for securing the DuraGrid soft tile to the surface of a building.

Thus, independent claims 1, 23 and 24 are not anticipated by <http://web.archive.org/web/2001020215800/http://durgrid.com/>, as argued by the Examiner in the outstanding Office Action. As such, none of the dependent claims which depend either directly or indirectly from claim 1, *i.e.*, claims 2-4, 7-10, 15, 17 are anticipated by <http://web.archive.org/web/2001020215800/http://durgrid.com/>.

Moreover, given the deficiencies noted above in <http://web.archive.org/web/2001020215800/http://durgrid.com/>, claims 11 and 18 are also not obvious over <http://web.archive.org/web/2001020215800/http://durgrid.com/>.

In view of the foregoing, it is believed that all of the claims pending in the application, *i.e.*, claims 1-4, 7-11, 15, 17, 18, 23 and 24 are now in condition for allowance, which action is earnestly solicited. If any issues remain in this application, the Examiner is urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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